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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

PELHAM, JOSEPH MOORE

ART UNIT	PAPER NUMBER
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3742

DATE MAILED: 04/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/822,420

Applicant(s)

MARCH ET AL.

Examiner

Joseph M. Pelham

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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The Examiner acknowledges Applicants' submission of the amendment filed 11/28/05. Claims 1-48 remain pending.

Applicants are urged to carefully review the rejections under 35 U.S.C. 112, second paragraph, which were not fully addressed in the Response to the previous Office action.

Claim Rejections - 35 USC § 112

Claims 1-48 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Each of independent claims 1, 18, and 34 recites a "toasting path having one side and another side," evidently intending thereby to distinguish the two sides; however, the subsequent recitations, in the same claims, referring to features "on one side of the path," can as well mean *either side* of the pathway, and has been thus interpreted in the rejections which follow. If Applicants intend to specify that the features – the heating "technologies" – are on the same side of the path, then this should be so recited as to unambiguously refer back to the antecedent basis: "the one side," or "the another side," noting the infelicity of the latter.

Claims 5, 22, and 38 all recited "horizontal inlets...*coupled* to a *vertical* portion of the pathway" (Examiner's emphasis). Applicants' Response cites vertical and horizontal conveyors but does not address the indefiniteness rejection of the previous Office action. The horizontal inlets are perhaps *adjacent* to the vertical conveyor section, but the recitation that they are "*coupled* to a vertical portion of the *pathway*" implies a functional relation which is not present. The inlets feed into the *horizontal* portion of the pathway, as disclosed in the specification.

Claims 6, 23, and 39 recite "the platen heating element," for which there is no antecedent basis. The independent claims from which these depend recite a "platen" only, and not a "platen heating element."

Claims 7, 24, and 40 now recite that "*the outlet*" includes a foil heater plate" (Examiner's emphasis); however, *not the outlet*, but only the "receiving tray 59" is disclosed to include this heater.

Claim Rejections - 35 USC § 102

Claims 1-3, 5, 9-11, 18-20, 22, 34-36, 38, and 42-44 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. 4281594 (US'594).

Referring to Fig.2. col. 1, line 64, through col. 2, line 8, col. 2, lines 40-68, and col. 3, lines 35-51, US'594 discloses a toasting device with housing comprising two heater platens 31, 62/52 which are heated by embedded elements, first and second inlets 38 and toasting paths having platens adjusted for different food thicknesses, and radiant heaters 71, "spaced apart" from the heater platens, which *also provides the recited "impingement heating,"* because the air heated by the radiant heaters rises to the conveyor region and therefore inherently transfers heat by convection. The recited

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"horizontal inlets...coupled to a vertical portion of the pathway" has been interpreted to intend that the horizontal inlets be functionally associated to a *horizontal* portion of the pathway, which limitation is met by US'594.

Claim Rejections - 35 USC § 103

Claims 7, 14, 15, 24, 31, 40, 45, and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over US'594.

Noting that although the claims recite that "the inlet includes a foil heater plate," this has been interpreted to intend that the "receiving tray 59" includes the heater plate; the claims otherwise differ from US'594 only in calling for a receiving tray with foil heater, eight IR heating elements, gear size variation and motor speed control of the conveyor, such does not patentably distinguish the claimed invention from the prior art. It would have been obvious to provide and heat a receiving tray because these means have long been utilized to maintain palatable temperatures of food items cooked in a conveyor oven; although US'594 depicts six but does not otherwise specify the number of IR heating elements, it would have been obvious to utilize eight, or any appropriate number, depending strictly upon the size of the oven and the volume rate of food that passes through; and it would have been obvious to utilize gear size variation and motor speed control for the conveyor because such are also conventional and well known means to vary conveyor speed, commended strictly by the variety of food or bread types toasted in the oven.

Allowable Subject Matter

Claims 4, 6, 8, 12, 13, 16, 17, 21, 23, 25-30, 32, 33, 37, 39, 41, 47, and 48 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed 11/28/05 have been fully considered but they are not persuasive. Applicants state that US'594 discloses "a single technology on each side of the bun," which is susceptible to overheating of the contact heater if the radiant heater and contact heater are in confronting relation, but the "present invention provides two or three technologies on one side of the bun," placing the contact heaters "away from" the other heating means. As noted above, the claims recite only that *each* heat source is "located...on one side of the path," conventionally implying individual placement on either side but not both.

Further, the claims recite only that the "impingement heating" is "spaced apart" from the platen heater, which is clearly the case with the radiant heaters 71 of US'594, which are "spaced apart" from the platen heater 62. If Applicants contemplate that the toasting path pass through the heating means individually, and not simultaneously, this should be so recited.

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The Examiner notes in conclusion that the term of art for that to which Applicants refer as "impingement heating" is "convection heating," specifically "forced convection heating."

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph M. Pelham whose telephone number is 571-272-4786. The examiner can normally be reached on M-F 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robin Evans can be reached on 571-272-4777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

4/8/06



JOSEPH PELHAM
PRIMARY EXAMINER